

**TITLE 16. PROFESSIONAL FIDUCIARIES BUREAU
DEPARTMENT OF CONSUMER AFFAIRS
EMERGENCY ADOPTION OF DIVISION 41
(Commencing with Section 4400)**

EXPRESS FINDING OF EMERGENCY

A licensing and regulatory program for professional fiduciaries was established by Senate Bill 1550 (Figueroa, Chapter 491, Stats. 2006) that created the Professional Fiduciaries Bureau (Bureau), and was amended by clean-up legislation, Senate Bill 1047 (Committee on Business, Professions, and Economic Development, Chapter 354, Stats. 2007). The licensing and regulatory program that is governed by the Professional Fiduciaries Act (Act) was passed to require licensing of private conservators, guardians, trustees, and agents under durable power of attorney to protect vulnerable consumers including infirmed seniors, disabled persons, and children. Professional fiduciaries provide critical services to these consumers by managing their personal and financial affairs.

Due to the sensitive nature of the fiduciary relationship and the potential for abuse many fiduciary arrangements must be supervised by the court. Therefore, as part of the implementation of the new program, the Act prohibits a superior court from appointing a person as a professional fiduciary on or after July 1, 2008 unless the fiduciary is licensed (Probate Code Section 2340). To ensure that good standing private fiduciaries can obtain timely licensure and that these consumer services are still available come July 1, 2008 it is necessary to adopt emergency regulations to protect the public health, safety, and welfare.

Without timely licensure, many needy consumers will be unable to secure services from private fiduciaries to manage their daily lives. This could be a disaster for individuals who cannot make decisions regarding their own care or manage their own finances. Without available fiduciary services, these consumers may be forced instead to rely upon family members who lack the appropriate skills or who face potential conflicts with siblings or other relatives, or, they may have no other choice but to hire unskilled workers exposing them to potential negligent care or to individuals that could easily abuse their position of authority and trust and endanger the consumer's health and well being.

Therefore, the Bureau finds that the immediate preservation of the public's health, safety, and welfare requires the emergency adoption of these proposed licensing regulations.

The Bureau's basis for this finding is as follows:

- Emergency regulations must be adopted immediately to create the Bureau, and implement and make specific the provisions of the Act that relate to the qualifications of the licensing application (Business & Professions Code Sections 6533, 6534, 6536, 6561), examination criteria (Business & Professions Code Section 6539), and annual reporting requirements for professional fiduciaries (Business & Professions Code Sections 6534, 6536, 6561).

- Professional fiduciaries include private conservators, guardians, trustees, and agents under durable power of attorney for health care and finances, as defined in the Professional Fiduciaries Act (Act) (Business & Professions Code Sections 6501, 6530). They provide critical care management services to vulnerable citizens including seniors, disabled persons, and children.
- According to SB 1550, the number of California's population 65 years of age or older will grow from 3.6 million people in the year 2000, to 6.2 million people in the year 2020, an increase of 72 percent (SB 1550, SEC 2).
- As the population of California grows, an increasing number of people in the state are unable to provide properly for their personal needs, manage their financial resources, or resist fraud or undue influence as well as fiscal, emotional, and physical harm (SB 1550, SEC 2).
- With the increase in the aging population, the Legislature declared that the system for conservatorships in California significantly underperforming (SB 1550, SEC 2) and, as a result, a greater number of consumers are at risk.
- Creation of a program to license and regulate professional fiduciaries is necessary to protect the public health, safety, and welfare (SB 1550, SEC 2).
- The Act requires professional fiduciaries to be licensed on or before July 1, 2008 in order to be eligible to receive court appointments when necessary to represent clients' affairs (Probate Code Section 2340).
- Emergency regulations are needed to enable the Bureau to timely notify fiduciaries of the licensing requirements to provide licensing candidates a reasonable amount of time to meet the mandates of the Act before July 1, 2008 and to provide the courts and the public with critical fiduciary information regarding licensees.
- First, emergency regulations are needed to specify the qualifications for the licensing application. This will provide the authority necessary for the Bureau to create the application packages and timely inform candidates regarding the requirements for licensure. The licensing applications will require candidates to meet the qualifications of the Act including fulfilling the education and/or experience requirements, obtaining the 30 hours of prelicensure education, submitting fingerprints for a criminal background check, and passing an examination. Adopting criteria immediately will enable the Bureau to notify licensing candidates in December 2007 and give candidates a reasonable amount of time to complete the licensing process before July 1, 2008.
- As part of the application, candidates must also submit detailed information regarding their past professional conduct for evaluation of suitability for licensure. If a fiduciary has ever engaged in dishonesty, fraud, or gross negligence in performing the functions or duties of a fiduciary, or has ever been removed by a court for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference, or has demonstrated a

pattern of negligent conduct, a candidate can be denied licensure (Business & Professions Code Section 6536). As such, there must be sufficient time for candidates to compile and report a complete history of the required data for licensure (Business & Professions Code Sections 6533, 6534, 6536, 6561). Therefore, candidates must be timely informed of the application requirements to obtain licensure by the deadline.

- Due to the intricacies of licensing qualifications a reasonable amount of time need also be allotted for the application review process. A standard review will involve an assessment of past business practices of an applicant, including reviewing disclosed information and statements of explanation, and when necessary, the Bureau is required to conduct an investigation prior to making a final determination of qualification (Business & Professions Code Section 6536). Therefore, the proposal provides that the Bureau has 90 days to notify an applicant that the application is complete and accepted for filing or that it is deficient and what information is needed to complete the application (Proposed Section 4424(a) of Article 2 of Division 41 of Title 16 of the CCR). Applicants should then be given a reasonable amount of time to comply with any noticed deficiency. As such, emergency regulations will provide applicants a fair opportunity to meet the mandates of licensure before the deadline.
- Second, examination procedures must be adopted immediately so that candidates have a reasonable timeframe to take and pass the examination before the deadline for licensure (Business & Professions Code Section 6539). The proposal provides an applicant can take and retake the examination once every 30 days for a total of no more than five examinations within a 12-month eligibility period (Proposed Section 4500 of Article 5 of Division 41 of Title 16 of the CCR). With the immediate adoption of emergency regulations, the Bureau's goal is have the examination developed and offered beginning in February 2008. This will give candidates an opportunity to test and retest if necessary prior to the cut-off date.
- Finally, emergency regulations are needed to specify the annual reporting requirements of the Act. Under the proposal, professional fiduciaries must file their initial annual report within 60 days of licensure (Proposed Section 4540(a) of Article 7 of Division 41 of Title 16 of the CCR). The report must include specific personal and historical business information (Business & Professions Code Section 6561). Additionally, licensees must report certain current non-confidential information for access by the public and the courts and certain current confidential information for access by only the courts (Business & Professions Code Section 6534). Regulations must be adopted immediately so licensing candidates are aware of the reporting requirements for licensees so they can begin gathering the necessary information for immediate reporting upon licensure.
- The annual reports will provide critical information regarding professional fiduciaries to consumers, to the courts, and to the Bureau. The reports will assist consumers in researching and monitoring fiduciaries; the reports will be available to the courts for consideration as to suitability of fiduciaries for court appointment, and, the reports will be used by the Bureau for enforcement purposes and license renewal. This reported information need be available as soon as possible following licensure because of the critical

nature of fiduciary responsibilities and the need to closely monitor licensees for consumer protection.

- Therefore, it is necessary to adopt these proposed emergency regulations in order to provide for the timely adoption of requirements for the licensing program to regulate professional fiduciaries to protect the public health, safety, and welfare.

STATEMENT OF SPECIFIC FACTS SHOWING THE NEED FOR IMMEDIATE ACTION

A licensing and regulatory program for professional fiduciaries was established by Senate Bill 1550 (Figueroa, Chapter 491, Stats. 2006) that created the Professional Fiduciaries Bureau (Bureau), and was amended by clean-up legislation, Senate Bill 1047 (Committee on Business, Professions, and Economic Development, Chapter 354, Stats. 2007). The licensing and regulatory program that is governed by the Professional Fiduciaries Act (Act) was passed to require licensing of private conservators, guardians, trustees, and agents under durable power of attorney to protect vulnerable consumers including infirmed seniors, disabled persons, and children. Professional fiduciaries provide critical services to these consumers by managing their personal and financial affairs.

Due to the sensitive nature of the fiduciary relationship and the potential for abuse many fiduciary arrangements must be supervised by the court. Therefore, as part of the implementation of the new program, the Act prohibits a superior court from appointing a person as a professional fiduciary on or after July 1, 2008 unless the fiduciary is licensed (Probate Code Section 2340). To ensure that good standing private fiduciaries can obtain timely licensure and that these consumer services are still available come July 1, 2008 it is necessary to adopt emergency regulations to protect the public health, safety, and welfare.

Emergency regulations must be adopted immediately to establish the licensing program, and implement and make specific the provisions of the Act that relate to the qualifications of the licensing application (Business & Professions Code Sections 6533, 6534, 6536, 6561), examination criteria (Business & Professions Code Section 6539), and annual reporting requirements (Business & Professions Code Sections 6534, 6536, 6561). This will enable professional fiduciaries to meet the licensure requirements prior to the July 1, 2008 deadline for court appointment. This will provide for immediate accountability and oversight of professional fiduciaries, which is necessary to protect the public health, safety, and welfare.

Professional fiduciaries are not adequately regulated at present. According to SB 1550, this lack of regulation has resulted in the neglect or the physical, emotional or financial abuse of vulnerable clients that professional fiduciaries are supposed to serve. Unless there is strengthened accountability, abuses of people who are unable to take care of themselves or their property by professional fiduciaries will increase (SB 1550, SEC 2).

Emergency regulations are needed to protect the immediate needs of consumers. The licensing requirements will provide public protection by ensuring that only qualified private fiduciaries obtain licensure. Furthermore, the annual reporting requirements, including the initial annual

report, will provide critical information regarding professional fiduciaries to consumers, to the courts, and to the Bureau. The reports will assist consumers in researching and monitoring fiduciaries; the reports will be available to the courts for consideration as to suitability of fiduciaries for court appointment, and, the reports will be used by the Bureau for enforcement purposes and license renewal. This reported information need be available as soon as possible following licensure because of the critical nature of fiduciary responsibilities and the need to closely monitor licensees for consumer protection.

In attempting to meet the deadline for licensure, any unnecessary delays in implementation of the Bureau could force otherwise qualified fiduciaries to suspend business operations because of the impracticability of meeting the licensing deadline. This could leave vulnerable consumers without professional health and safety services and restrict the marketplace at a time when consumer needs are rising with the escalating senior population. This could be a disaster for consumers who cannot make decisions regarding their own care or manage their own finances. Without available fiduciary services, these consumers may be forced instead to rely upon family members who lack the appropriate skills or who face potential conflicts with siblings or other relatives, or, they may have no other choice but to hire unskilled workers exposing them to potential negligent care or to individuals that could easily abuse their position of authority and trust and endanger the consumer's health and well being.

Furthermore, without timely licensure many fiduciary businesses could suffer financially possibly forcing many closures. This could impact the already predicted small size of the licensing population (estimated between 600 and 1,000) at a time when the consumer population is growing – further harming the public.

These proposed emergency regulations will enable qualified candidates to become licensed professional fiduciaries before July 1, 2008. This will provide for immediate accountability and oversight, which is necessary to protect the public health, safety, and welfare (SB 1550, SEC. 2).

AUTHORITY AND REFERENCE

Pursuant to the authority vested by section 6517, and to make specific and interpret sections 6500, 6501, 6502, 6510, 6516, 6517, 6518, 6520, 6530, 6533, 6533.5, 6534, 6535, 6536, 6537, 6538, 6539, 6560, 6561, and 6562 of the Business & Professions Code, the Professional Fiduciaries Bureau proposes the immediate adoption of Articles 1, 2, 5, 6, 7, and section 4443 of proposed Article 3, of new Division 41 of Title 16 of the CCR, as follows:

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INFORMATIVE DIGEST/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Prior to the enactment of SB 1550, the practice of private fiduciaries, defined as professional conservators, guardians, trustees, and agents under durable powers of attorney for health care and finances in the Act, was loosely regulated. The Department of Justice maintains a Registry of private conservators, guardians, and trustees, which acts as a clearinghouse of information for the

courts to access when considering court appointment of conservators and guardians and a place for consumers to obtain information regarding private fiduciaries. The Registry Program will sunset July 1, 2008 with these responsibilities shifting to the Department of Consumer Affairs as part of the new licensing program.

In 2006, the Legislature passed a series of bills, including SB 1550, to provide a comprehensive scheme to regulate professional fiduciaries both by the state and by the courts. The Professional Fiduciaries Act created the Bureau to license and regulate professional fiduciaries to protect the public health, safety, and welfare. By July 1, 2008, courts will be prohibited from appointing a private fiduciary without licensure (Probate Code Section 2340).

In order to establish a program and give applicants a fair opportunity to become licensed prior to July 1, 2008, the Bureau must immediately adopt procedures for the application process, examination criteria, and annual reporting requirements. Since it will take time for applicants to fulfill the licensing qualifications, including passing an examination, candidates should be given a reasonable amount of time to comply. Furthermore, there is a need to closely monitor licensed professional fiduciaries as soon as possible for consumer protection.

Therefore, regulations must be adopted immediately to protect the public health, safety, and welfare.

SPECIFIC DESCRIPTION OF PROPOSED REGULATIONS

This regulatory action adds Articles 1, 2, 5, 6, 7, and 8, and adds Section 4443 of proposed Article 3, to Division 41 of Title 16 (Commencing with 4400) of the California Code of Regulations. Specifically, this regulatory action:

Article 1. General Provisions

Adds Section 4400.

This section specifies the authority of the Act for regulations.

Adds Section 4402.

This section designates the Bureau's mailing address.

Adds Section 4404.

This section establishes the criteria for filing of business and residential addresses by licensees.

Adds Section 4406.

This section adopts a definitional section.

Article 2. Application

Adds Section 4420.

This section specifies the location for filing a licensing application with the Bureau.

Adds Section 4422.

This section defines the process for filing and processing the licensing application.

Adds Section 4424.

This section specifies the process for application review and license issuance.

Adds Section 4426.

This section defines the abandonment of application standard.

Adds Section 4428.

This section deals with the duration of an initial license, specifies the renewal date, establishes the related proration of fees, and defines the continued education requirements for the initial license and first renewal.

Article 3. Prelicensure and Continued Education

Adds Section 4443 to Proposed Article 3.

This section specifies the continued education requirements following initial licensure.

Article 5. Examination

Adds Section 4500.

This section establishes the examination criteria.

Article 6. License Denial

Adds Section 4520.

This section establishes standards for license denial.

Adds Section 4522.

This section specifies the rehabilitation criteria for licensure.

Article 7. Annual Reporting Duties of Licensees

Adds Section 4540.

The section adopts specific annual reporting requirements.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funds to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Costs to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Local Mandates: None

Significant Adverse Impact on Businesses: None

Impact on Jobs/New Businesses:

The regulations will impact individual candidates by the time it takes to fill out the application and take the exam and it will impact licensees by the time it takes to meet the annual reporting and license renewal requirements of the Act. This licensing program will create a new career path for individuals.

Cost Impact on Private Persons or Businesses Directly Affected:

The costs associated with this regulation only include those costs associated with the time it takes to fill out the application, take the examination, and meet the reporting requirements of the annual statement. There are no fees contained in the regulation.

Effect on Housing Costs: None